

STATE OF MICHIGAN
COURT OF APPEALS

FELICITY LEDDY, MICHAEL DALLEN,
DOROTHY PIERCE, JUDITH R. NEWASH,
CHARLES F. WEAVER, and JAMES NETTER,

Plaintiffs-Appellants,

v

DIRECTOR OF DEPARTMENT OF
MANAGEMENT AND BUDGET, AUDITOR
GENERAL, SUPERINTENDENT OF DETROIT
SCHOOL DISTRICT, TARTAN
ORGANIZATION, LLC., and STATE FAIR
DEVELOPMENT GROUP, LLC.,

Defendants-Appellees.

UNPUBLISHED
September 25, 2003

No. 235215
Wayne Circuit Court
LC No. 01-116171-CZ

Before: Murray, P.J., and Neff and Talbot, JJ.

MEMORANDUM.

In this case, the State of Michigan agreed to sell thirty-four acres of state-owned property to State Fair Development Group (State Fair). State Fair then entered into an agreement to sell the property to the Detroit Public School District. Plaintiff taxpayers sought a declaratory judgment to set aside the agreements and to enjoin performance under the agreements. Defendants argued in their first responsive pleading that plaintiffs lacked standing to sue. The trial court concluded that plaintiffs lacked standing as state and municipal taxpayers and as taxpayers under the common law. Plaintiff taxpayers appealed as of right an order entered by the Wayne Circuit Court dismissing their suit for lack of legal capacity to sue, MCR 2.116(C)(5). We affirm.

We agree with the trial court that plaintiffs lacked standing. “[T]he first requirement that a party must meet to request a trial court to grant any type of relief, including an injunction, is that the party have ‘standing’ to request the relief.” *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001). Pursuant to MCL

600.2041, “[e]very action shall be prosecuted in the name of the real party in interest.”¹ On appeal, plaintiffs rely on the decision in *Menendez v City of Detroit*, 337 Mich 476, 482; 60 NW2d 319 (1953), and argue that the common law would grant them standing without a showing of an injury distinct from that of the public. We disagree. It is well settled Michigan law that “the concept of standing ordinarily requires that a party have ‘an interest distinct from that of the public,’” *Mich Coalition, supra* at 218-219, and a taxpayer must present “a particularized showing of irreparable harm” to obtain an injunction. *Id.* at 225-226. In this case, plaintiffs failed to show any interest distinct from that of the public or any irreparable harm. Instead, plaintiffs argue on appeal that the trial court erred in determining that they were required to show “unique” or “substantial” injury. Because plaintiffs lack standing in this case, we do not address plaintiffs’ claim that Michigan law no longer requires a showing of a “substantial” injury.²

Affirmed.

/s/ Christopher M. Murray

/s/ Janet T. Neff

/s/ Michael J. Talbot

¹ An exception to the general standing rule as provided by MCL 600.2041(3) is an action to prevent “the illegal expenditure of state funds” that may be brought in the names of at least five residents who own property assessed for direct taxation by the county of their residence. MCL 600.2041(3). On appeal, plaintiffs do not argue that their standing in this case derives from a challenge to an illegal expenditure of state funds pursuant to section 2041(3). Accordingly, to sustain standing in this case, plaintiffs must show that they are “the real party in interest.”

² Importantly, intervening circumstances in this case occurred during the pendency of this appeal that arguably render the issues on this appeal moot. Defendant State Fair brought suit against the State of Michigan, Department of Budget and Management, in the Oakland Circuit Court, Case No. 01-034691-CK. The issues in that case involved questions unrelated to the case on this appeal. Following extensive negotiations under a facilitator, the parties in Case No. 01-034691-CK reached a mutual release and settlement agreement, referred to by the parties as a “global agreement,” resolving all the issues between State Fair and the State of Michigan, including the disposition of the thirty-four acres of land that is the subject of this appeal.

The language of the subsequent release and settlement agreement expressly provides that the terms of the initial purchase agreement between the State of Michigan and State Fair remain valid except for the terms that are expressly contradicted by the mutual release and settlement agreement, in which case the terms of the settlement agreement control. Accordingly, the initial purchase agreement, the subject of the case before the Wayne Circuit Court, is now controlled by the subsequent mutual release and settlement agreement that was entered by the Oakland Circuit Court.